



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Jefferson Nah, Office
of the Public Defender

Administrative Appeal

CSC Docket No. 2018-3224

ISSUED: August 1, 2018 (SLD)

Jefferson Nah, a former Clerk Driver with the Office of the Public Defender (OPD), represented by Penelope Scudder, Esq., appeals the denial of his request for Supplemental Compensation on Retirement (SCOR) pursuant to *N.J.A.C. 4A:6-3.1(b)1*.

By way of background, Nah was issued a Preliminary Notice of Disciplinary Action (PNDA) on November 30, 2017, requesting his removal from employment, and immediately suspending him with pay, effective November 30, 2017, pending a pre-termination hearing scheduled on December 4, 2017. On December 4, 2017, the parties entered into a settlement agreement. The December 4, 2017 settlement agreement specifically provided, in pertinent part, that:

- 1.) The appellant has indicated his wish to resign his position as a Clerk Driver, effective 12/31/2017. Further, the appellant has indicated his desire to retire effective 01/01/2018. The appellant's position with the Office of the Public Defender will be considered resigned in good standing effective 12/31/2017 in accordance with *N.J.A.C. 4A:2-6.1*. Upon his resignation, the respondent agrees to withdraw the Preliminary Notice of Disciplinary Action for a forty-five [day] suspension dated June 5, 2017 and Removal 11/30/2017, from the appellant's Personnel file. The appellant will remain in vacation status effective 2:00 p.m. 11/20/2017 through 12/29/2017.

It is noted that Nah and his representative, Gaye Palmer, President, CWA Local 1033 signed the Settlement Agreement. Subsequently, the appointing authority submitted a request for SCOR on behalf of the appellant to this agency. However, the request was denied pursuant to *N.J.A.C. 4A:6-3.1(b)1* which provides that employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR.

On appeal, Nah argues that the determination that he was not eligible for SCOR was erroneous as he “was not removed for cause, nor did he retire in lieu of removal.” Rather, he maintains that he “resigned in good standing and retired in lieu of pursuing the disciplinary grievance process.” Moreover, he maintains that the PNDA which sought his removal was withdrawn by the appointing authority. In support, he submits a certification from Ms. Palmer in which she asserts that before a departmental hearing took place she engaged in settlement negotiations with the appointing authority which resulted in a “settlement agreement in lieu of following the grievance process.” Additionally, she asserts that no departmental hearing was conducted and no Final Notice of Disciplinary Action (FNDA) was issued.

In response, the appointing authority reiterates the facts of this matter and maintains that it is clear that Nah resigned/retired in lieu of discipline. In particular, it notes that the settlement agreement specifically provides that he agreed to resign/retire and the appointing authority would withdraw the PNDA.

In response, Nah maintains that the hearing scheduled for December 4, 2017 was only a pre-termination hearing and not a hearing on the merits of the discipline. Additionally, Nah asserts that although the appointing authority acknowledged that it withdrew the PNDA in response to his agreement to resign/retire, it then argues that the appellant resigned/retired in lieu of “taking their chances on appeal in the face of said removal for cause.” Nah argues that these two statements are contradictory as the appellant agreeing to resign/retire in exchange for the withdrawal of the PNDA is “plainly not the same as retiring in lieu of removal, as no final disciplinary action was ever taken against” him. Specifically, he argues that pending disciplinary charges are not the same as final charges, and to consider a PNDA as being the same as a FNDA utterly ignores his due process rights. Therefore, Nah argues that he did not retire in lieu of removal. Rather, he retired in lieu of pursuing the formal disciplinary appeal process as he had reached a satisfactory settlement with the appointing authority.

CONCLUSION

N.J.A.C. 4A:6-3.1 provides in pertinent part that:

- (a) The following employees shall be eligible for supplemental compensation on retirement (“SCOR”):
1. State employees in the career service and employees in the senior executive service with underlying permanent career service status;
- * * *
- (b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.
1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR . . .

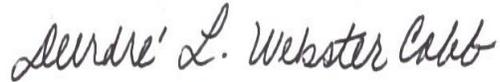
The Settlement Agreement expressly provided that Nah resigned in good standing, effective December 31, 2016 and retired, effective January 1, 2017, in exchange for the appointing authority withdrawing two PNDAs, which indicated it sought a 45 day suspension and Nah’s removal. Although the appellant argues that he did not retire or resign in lieu of removal because only a PNDA and not a FNDA had been issued, the Civil Service Commission does not find this argument persuasive. In particular, *N.J.A.C.* 4A:6-3.1(b)1 specifically provides for three situations involving disciplinary removal where an employee shall not be eligible for SCOR. The first, an employee who has been “removed for cause after an opportunity for a hearing,” encompasses the situation the appellant raises. However, the next two groups include employees who “retire in lieu of removal, or who retire under circumstances which would warrant removal,” clearly includes those situations where a FNDA or even a PNDA were not yet issued. The facts in this matter are not disputed. Nah was issued a PNDA, which immediately suspended him and sought his removal. As a result of settlement negotiations Nah agreed to resign/retire and the appointing authority agreed to withdraw the pending discipline. Consequently, as his retirement was in lieu of discipline, pursuant to *N.J.A.C.* 4A:6-3.1(b), he is not entitled to SCOR.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF AUGUST, 2018



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